IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Desciption of case
Date of Decision: 1st March, 2006

Sales Tax Revision No. 103 of 2003
Old no. 1701 of 1991

Commisiioner of Salex Tax
U.P. Lucknow. .....Applicant/Revisionist

Vs.

S/S Lal Kuwan Dugdha Utpadan/Sangh
Ltd. Lal Kuwan, Haldwani .....Opposite Party

Learned Chief Standing Counsel for the revisionist.
Shri Lalit Belwal, learned counsel for the respondent.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Hon. Mr. Justice Prafulla C. Pant)

Date: 01.03.2006

Note: Bench Reader will attach this at the top of first page of the Judgment when it is put up before the Judge for signature.

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Shri Lalit Belwal, learned counsel for the respondent.

Hon'ble Prafulla C. Pant, J.

This revision, preferred under Section 11 (1) of the U.P. Sales Tax Act, 1948, is directed against the judgment and order dated 20.08.1991, whereby Second Appeal No. 124 of 1991, was allowed by the Sales Tax Tribunal, Haldwani.

2. The question involved in this revision is as under:-
Whether "cattle feed" and "cattle fodder" are different commodities for the purposes of imposing Sales Tax, as contended by the revisionist?

3. Heard learned counsel for the parties and perused the record.

4. Assessee/respondent is a cooperative dairy unit, which deals in business of milk, milk products and cattle feed etc. for the assessment year 1984-85, it has shown turnover of Rs. 6,86,522, as taxable sale apart from the sale

of cattle feed to the tune of Rs. 50,000/-. The Assessing Officer has imposed tax on the sale of cattle feed also. Against which assessee filed an appeal, claiming that cattle feed is an exempted item from the sales tax. The appeal of the dealer (assessee) was allowed by the tribunal, holding that cattle feed and cattle fodder are one and the same item and as such not liable to be taxed. Aggrieved by which, this Revision has been preferred by the Revenue.

5. In the notification No. ST-11-3714/X-6 (1) 85 –U.P. Act 15/48 order 85 dated 05.06.1985, it has been clarified that cattle fodder includes green fodder, chuni, bhusi, chillka, Chokar, javee (popularly known as Ghurjai), gowar, deoiled cake, deoiled rice polish, de oiled rice bran, de oiled rice husk but not oil cake (Khali), rice polish, rice bran and rice husk. In view of said notification, for the assessment years under consideration, only oil cake, rice polish, rice bran and rice husk, cannot be said to be exempted from the tax but same is not the case in respect of the other cattle feed, which are included under the definition of cattle fodder.

6. In commissioner Sales Tax Vs. S/S Paras Ram Lachhi Ram, S.T.I. 2005 All. H.C. Pg. 466, it has been held by the Allahabad High Court that “cattle feed” is nothing but “cattle fodder”, and as such an exempted item from the sales tax. In Omrao Industrial Corporation Ltd. Vs. Sales Tax Officer, 1974 S.T.C. Vol. 33 Pg. 343, it has been held by Allahabad High Court that there is no material difference between “cattle fodder” and “cattle feed” and anything which is used as cattle feed could as well be called cattle

fodder. While interpreting the aforesaid notification dated 5th June, 1985, the Apex Court has also held in Commissioner Sales Tax Vs. Ram Chandra Asha Ram 2000 U.P.T.C. Pg. 636, that what is exempted under notification dated 5th June, 1985 is cattle fodder. In generic sense, the expression "cattle fodder" is inclusive of everything that is fed to cattle including damaged wheat.

7. In view of above discussions, this Court is of the opinion that submission of the learned counsel for the revisionist cannot be accepted that only roughage can be called as cattle fodder and cattle feed is excluded from it. What is excluded form the tax is only oil cake (khali), rice polish, rice bran and rice husk. It is not the contention of the learned Standing Counsel that the items sold by the dealer were either of these four. As such, this Court does not find any merit in this revision. Therefore, the question of law is answered in favour of the assessee and the revision is dismissed.

(Prafulla C. Pant, J.)

Dt: 01.03.2006
Sweta